IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO. 245/2002

RASIK BEHARI MATHUR Vs. STATE OF RAJASTHAN

DATE: 28.05.2007.

HON'BLE MR. K. S. RATHORE, J.

Mr. R.N. Khandelwal with
Mr. Mahesh Gupta for the accused-petitioner.
Mr. B.K. Sharma, Public Prosecutor for the State.
Mr. S.P. Tyagi for C.B.I.

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R E P O R T A B L E

This criminal revision petition under Section 397 r/w Section 401 Cr.P.C. is directed against the order dated 06.02.2002 passed by the Special Judge, CBI Cases, Jaipur in Special Case No. 1/97, whereby charges under Section 168 IPC and Section 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 have been framed against the accused-petitioner.

Brief facts of the case are that one FIR dated 15.04.96 was lodged by the S.P., CBI, Jaipur wherein it was given out that the petitioner Shri R.B. Mathur while working as Divisional Manager, LIC of India, Jeevan Prakash, Jaipur during the year 1994-95 hatched a criminal conspiracy with Smt. Prem Bihari Mathur,

Proprietor of M/s Dream House Developers & Colonisers, Jaipur to commit the offence of criminal misconduct and cheating. In pursuance of the said criminal conspiracy they dishonestly and fraudulently got sanctioned form loan of Rs. 30 lacs and obtained loan of Rs. 10,48,800/- by creating security by way of equitable mortgage of property D-29, Patrakar Colony, Jaipur to the UCO Bank, Ajmer Road, Jaipur on 11.10.95 by misrepresentation and preparing false documents knowingly that petitioner Shri R.B. Mathur was not the absolute owner of the said property. The above acts of the petitioner and his wife Smt. Prem Kumari Mathur prima-facie discloses commission of offences punishable under Section 120-B r/w 420, 467/468 and 471 IPC and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 (for short 'the P.C. Act, 1988) and substantive offences punishable under Section 420, 467/468 and 471 and 13(2) r/w 13(1)(d) of the P.C. Act, 1988.

On the basis of the said report the case was registered against the accused-petitioner and after investigation the CBI submitted charge-sheet against the petitioner in the Court of Special Judge, CBI Cases, Jaipur under Section 168 IPC and Section 13(2) r/w Section 13(1)(d) of the P.C. Act, 1988. The Special Judge after submission of the charge-sheet framed

charges against the accused-petitioner for the offences under Section 168 IPC and Section 13(2) r/w Section 13 (1)(d) of the P.C. Act, 1988 vide its order dated 06.02.2002.

Aggrieved and dissatisfied with the said order of the Special Judge dated 06.02.2002, the accused-petitioner has preferred the present revision petition on the ground that as regards charge under Section 168 IPC, no offence under Section 168 IPC is made out against the accused-petitioner.

Learned counsel Mr. Khandelwal appearing on behalf of the accused-petitioner has referred Section 168 IPC which reads as under:-

> **"168. Public servant unlawfully engaging in trade.-** Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."

Mr. Khandelwal gives much emphasise that the petitioner is not engaged in trade and as stipulated under Section 168 IPC the public servant can only be punished in case he has been engaged in trade with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Learned counsel for the petitioner also referred Section 169 IPC (Public servant unlawfully buying or bidding for property) and further placed certified copy of the letter dated 7th June, 1994 whereby petitioner Rasik Behari Mathur informed the Sr. Divisional Manager, LIC of India, Jaipur that his sons Shri Ravi Mathur and Shri Anuj Mathur, one being Civil Engineer and other an Architect are doing there own construction business as Builder and Promoters for the past ten years and they are presently constructing one residential complex at D-29, Shanti Path, Patrakar Colony, Jaipur. It is also submitted in the letter that the above mentioned property was purchased by the petitioner as being Karta of his Hindu undivided family in 1979 which was later on fully partitioned in the year 1985 and this said property came in the share of his two sons and his wife with an annual charge of his daughter. It is further expressed by the petitioner that he has no income or charge on the said property and this fact has been duly declared by him and his sons in their income tax returns since 1985. In this letter the petitioner further submitted that now his sons are in need of money for the construction of the above mentioned residential complex and are taking loan for this from the bank and as per the requirement of

the bank his signatures are required as the original title are in his name. Thus, the allegations which have been alleged that the petitioner has not seek any permission is not correct. The petitioner had already seek permission through his letter dated 7th June, 1994.

Learned counsel Mr. Khandelwal further referred Clause 27 of the (Staff) Regulations, 1960 and as per Clause 27 no employee or class of employee shall, except with the approval of the Corporation, engage directly or indirectly in any trade or business.

It is no doubt that the said regulations prohibits the petitioner from indulging in trade but as per Clause 27 the petitioner has to seek approval of the Corporation. Here in the instant case, the petitioner only informed to seek permission vide his letter dated 7th June, 1994 but approval has not been granted by the LIC.

Learned counsel for the accused-petitioner submits that it is not necessary to seek approval under the (Staff) Regulations, 1960 as the Regulations are not having statutory force. In support of his submission, Mr. Khandelwal placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **R. Sai Bharathi Vs. J. Jayalalitha and others, AIR 2004 SC 692,** more particularly Head Note 'H'.

Learned counsel for the petitioner also argued on several points including in dealing single transaction and placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Remington Rand of India Ltd. Vs. Tahir Ali Saifi and another, (1976) 3 SCC 69** and the judgment reported in **AIR 1980 SC 1167,** wherein the Hon'ble Supreme Court has held that single transaction cannot be said to be indulged in trade and thus in view of the ratio decided by the Hon'ble Supreme Court, the petitioner is not indulged in trade.

It is further contended that since no case under Section 168 IPC is made out against the accused-petitioner, the question of case under Section 13(2) r/w Section 13(1)(d) of the P.C. Act, 1988, in the facts and circumstances of the case, does not arise.

Per contra learned counsel Mr. Tyagi appearing for the CBI submits that it is no doubt that the petitioner is a public servant which is not disputed and thus the CBI is empowered to lodge FIR against the accused-petitioner.

So far as empowerment is concerned, I am agree with the submissions made by the learned counsel for the CBI that employees of the LIC are public servants

and FIR lodged by the CBI is within their competence, but so far as case under Section 168 IPC is made out or not is concerned, as in the facts and circumstances of the case, every fact is on record that the plot in question is in the name of the petitioner but as per the family settlement it is divided amongst the children and the wife and that information is also furnished to the Income Tax Department. It is also not disputed that this property is partitioned between the children and the wife of the petitioner and it is not disputed that the said plot is still in the name of the petitioner and for obtaining loan signature of the petitioner is essentially required and to this effect the petitioner already informed the Sr. Divisional Manager, LIC of India, Jaipur vide his letter dated 7th June, 1994.

Upon careful perusal of the relevant record, to establish the guilt of the petitioner under Section 168 IPC and under Section 13(2) r/w Section 13(1)(d) of the P.C. Act, 1988 it was required to be enquired in the matter whether after seeking permission, permission was accorded by the LIC or not? The letter which was written by the petitioner is on the record, but the CBI has not enquired into this aspect and the CBI is not able to establish the offence against the accused-

petitioner as to how the offence is made out under Section 168 IPC.

Further as per Section 13(1)(d) of the Prevention of Corruption Act, 1988, for holding the petitioner responsible under the aforesaid offence, it is necessary to be examined by the CBI that the petitioner by corrupt or illegal means, obtained for himself or for any other person any valuable thing or pecuniary advantage. Section 13(1)(d) of the Prevention of Corruption Act, 1988 reads as under:-

> **"13. Criminal misconduct by a public servant.**
>
> (1) A public servant is said to commit the offence of criminal misconduct,-
>
> (a)_ _ _
> (b)_ _ _
> (c)_ _ _
> (d) if he, -
>
> (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
>
> (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
>
> (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or _ __ _ _"

Admittedly here in the instant case the petitioner has owned a plot which cannot said to be abusing his position as being a public servant and holding office as a public servant, therefore, the offence under Section 13(2) r/w Section 13(1)(d) of the P.C. Act, 1988 is also not made out against the accused-petitioner.

Upon careful perusal of the impugned order dated 06.02.2002 passed by the Special Judge, CBI Cases, Jaipur as also the relevant record, it appears that the Special Judge while framing charges against the accused-petitioner under Section 168 IPC and Section 13(2) r/w Section 13(1)(d) of the P.C. Act, 1988, without being satisfied that any prima-facie case is made out against the accused-petitioner under the aforesaid offences, has framed charges which is per se contrary to the settled proposition of law as laid down by the Hon'ble Supreme Court and this Court.

In such facts and circumstances of the case, as observed herein above, I find illegality and error apparent on the face of the record and the impugned order dated 06.02.2002 passed by the Special Judge, CBI Cases, Jaipur requires interference by this Court while exercising revisionary powers and the same deserves to

be quashed and set-aside and is hereby quashed and set-aside.

The revision petition stands allowed accordingly.

Record be sent back forthwith.

(K.S. RATHORE),J

/KKC/